Town of Milford
Zoning Board of Adjustment Minutes
May 2, 2013
Case #2013-03
Mark and Brian Danforth
Request for Rehearing

Present: Fletcher Seagroves, Chair
Laura Horning
Zach Tripp
Bob Pichette
Kevin Taylor
Mike Thornton, Alternate

Katherine Bauer, Board of Selectmen Representative

Absent: Paul Butler, Alternate

Secretary: Peg Ouellette

The applicant, Mark and Brian Danforth are requesting a rehearing of Case #2013-03, filed in accordance with RSA 677:2 and 677:3, and the Rules of Procedure, Rule XIII, of the Town of Milford Zoning Board of Adjustment.

Motion to Approve: May 16, 2013

Fletcher Seagroves, Chairman, opened the meeting by stating that the hearings are held in accordance with the Town of Milford Zoning Ordinance and the applicable New Hampshire Statutes. He continued by informing all of the procedures of the Board; he then introduced the Board.
Fletcher Seagroves stated that this is an appeal of a decision.
Z. Tripp said it is a request for a rehearing, which F. Seagroves agreed with.
F. Seagroves read, for the benefit of the audience, from the Handbook that states the recommendation that the meeting to consider a Motion for Rehearing is not a public hearing and no testimony is taken. It is a public meeting and anyone has the right to attend but all the board is acting on is the motion in front of them and not comments by the applicant, petitioner or abutters. If the board believes there are sufficient grounds to reconsider their original decision, the motion should be granted; if not, the motion should be denied. He stated that the Board would be discussing Case #2013-03, a request for a variance by Mark and Brian Danforth, owners of Map 6, Lot 12, 843 North River Rd, in the Residence R District, who requested a variance to create a new lot of .60 acres.
F. Seagroves began by stating that everybody has the same information and had a chance to go over it. He said applicants mentioned #5 of the criteria, unnecessary hardship. He asked the Board if they wished to go through all the criteria one by one and discuss them.
B. Pichette questioned whether they needed to do that, since the Board had agreed on the first three.
F. Seagroves stated they have to go over whether they made any error in their decision.
At the suggestion of Z. Tripp, it was decided to comment on the applicant's application.
Z. Tripp said he denied it based on hardship and the spirit of the ordinance. The applicant stated a couple of reasons he thought they should grant a re-hearing. Taking the application and applying it to the portion applying to the spirit of the ordinance -The applicant gave a density question regarding the spirit and said it was within the spirit because the proposal is similar density to Falcon Ridge. In his opinion, the Falcon Ridge development is a development unto itself. He was not sure how much Falcon Ridge should be taken into consideration, whether they feel it is part of the neighborhood, since a lot of the questions regard the neighborhood. There were comments at the public hearing that Falcon Ridge was developed with small lots and less open space. So allowing a conforming two-acre lot part Falcon Ridge would still maintain proper density, but the lot in question of .6 acre lot down North River Rd which is a little more divorced from Falcon Ridge being at the bottom of the hill. If all the properties on N. River Rd happened to have enough frontage for a conforming lot and broke off a .6-acre lots on each, would that still be the spirit of the ordinance? He didn't think so. Re hardship, applicant gave financial situations and there was either misunderstanding or miscommunication when the applicant bought the lot, which is unfortunate. Proposed granting would be one way to rectify that. One way is to have Falcon Ridge behind them, they could have one lot be part of Falcon Ridge and one part of N. River Rd. Having frontage there would give them ability to do that but doesn't necessarily give them unnecessary hardship. If it were woods back there, they wouldn't have that option. He read from the application the criteria for unnecessary hardship stating that due to special conditions of the property that distinguish it from other properties in the area the property cannot be reasonably used. He did not feel that having Falcon Ridge behind the subject property was a special condition. He stated the applicant had not given any new information to indicate that they cannot use the property as a 2.6-acre lot. Falcon Ridge is .36 dwellings per acre. The current one dwelling on 2.6 acres is .37 per acre which is a higher density but a .6 acres lot would be 16 dwelling units per acre, resulting in a higher density. He did not see any special conditions of the property that prevent it from being used as a 2.6 acre lot with one house on it. He would have to deny this request for a re-hearing.
F. Seagroves commented that Falcon Ridge did not come before the Zoning Board. It went before the Planning Board which has the right to do what they did. They will create smaller lots if that will give more open space.
Z. Tripp said the Planning Bd. looked at it as one neighborhood.

F. Seagroves said he didn't think you could look at Falcon Ridge and this property the same way. He saw it as making a non-conforming lot, and he had a problem with that.
K. Taylor asked whether there was enough there for a re-hearing. Applicant is using Falcon Ridge, which is a totally different situation. The Planning Bd. put that in. They are dealing with North River Rd, not Falcon Ridge. The applicant hasn't proved hardship.
F. Seagroves said the applicant has not brought forth any information to show the Board made a mistake on its decision. He had said "no" on the hardship. He didn't think there was a hardship. Applicant has a piece of property with a house on it. Minimum is two acres and he has 2.6 acres.
B. Pichette said he didn't agree with the Board on the night of the hearing. He felt it creates a hardship on the owner. He realized the owner bought the property as 2.6 acres with an existing house on what he wanted to subdivide to a .6 acre. That opens up two acres to put in a nice residence on the 20acres lot. Applicant was going to renovate the house that is there now, which is in bad shape. Building another house would improve the existing house. That is why he felt it is hardship.
L. Horning said her understanding of the zoning ordinance, looking at the case the first time and discussing whether to have a re-hearing and first, whether the Board made an error in its decision, and secondly whether the applicant brought forth any new information evidence that would require them to rehear this case. They discussed Falcon Ridge extensively. Applicant purchased the home knowing that the road was there, long after Falcon Ridge was in. The applicant took that responsibility on himself. The Board is bound by the ordinance and not the applicant's financial condition. The ordinance states that lots require two acres minimum for that area. The ordinance also prohibits the Board from either making a conforming lot into a non-conforming one without there being an existing hardship, which is also dictated by the zoning ordinance, as to the peculiarity of the lot itself or, as in other cases, the location of property could lend itself to hardship necessitating reasonable request for a variance. In this case there is not overlying hardship, in her opinion. She didn't believe the applicant had presented any new evidence to say that. This is property the applicant has taken on to develop, and two acres are required In that area. She didn't think the applicant had brought in any new evidence and didn't believe there had been any substantial change in hardship requirements in this case.
F. Seagroves asked for any additional comments. There were none. He read: "After reviewing the information set forth in the motion for rehearing and reviewing evidence submitted in the underlying action, the Board of Adjustment member has determined the following findings of fact:" (He suggested each member make their comments on each before voting).

1. Was the motion for rehearing filed within 30 days after the date of the Board's decision?

Z. Tripp - yes. He believed it was within a week. The case was heard two weeks ago.

F. Seagroves – He believed the (the town) have five days to get the minutes completed. It is within the 30 days.

L. Horning – yes

B. Pichette – yes

K. Taylor – yes

2. Does the petitioner have standing to file the motion for rehearing (a Selectman, a member of the Zoning Board of Adjustment, a party to the action, a person directly affected by the action)?

L. Horning – yes. The petitioner has standing.

K. Taylor – yes.

B. Pichette – yes.

Z. Tripp – yes.

F. Seagroves – yes

3. Has the petitioner shown that the Board has made a technical error or, has the petitioner provided new evidence that was not available to the petitioner at the time of the hearing on the underlying action, or would an injustice be created if the motion for rehearing is denied?

K. Taylor felt petitioner hadn't shown any new evidence or brought in any new things. There was no technical error.

Z. Tripp said the petitioner didn't try to show the Board made any technical error. He didn't believe petitioner brought new evidence; he might have restated his case a little differently. The restatement did not change his decisions. He didn't believe any injustice was created if the motion for rehearing was denied.

B. Pichette said there was no technical error. Petitioner didn't provide new evidence. But, he felt they would create an injustice by not making a motion to rehear.

L. Horning said the petitioner never showed technical error. There was no new evidence brought forth. The Board is dictated by the ordinance and must apply it to the different cases. According to the zoning ordinance, she didn't feel an injustice would be created if the rehearing was denied. She didn't believe her decision would change, as dictated by the ordinance.

F. Seagroves said he didn't believe petitioner proved any technical error. He didn't see any new evidence that was not available to the petitioner at the time of the hearing. He didn't think any injustice was created if motion for rehearing was denied.

F. Seagroves asked for any further comment from the Board. There was none, so they proceeded to vote on the criteria:

1. Was the motion filed within 30 days after the date of the Board's decision?

L. Horning – yes
Z. Tripp – yes
B. Pichette – yes
K. Taylor – yes
F. Seagroves – yes

2. Does the petitioner have standing to file a motion for rehearing, (a Selectman, a member of the Zoning Board of Adjustment, a party to the action, or a person directly affected by the action)?

B. Pichette – yes
K. Taylor – yes
L. Horning – yes
Z. Tripp – yes
F. Seagroves – yes

3. Has the petitioner shown that the Board has made a technical error or, has the petitioner provided new evidence that was not available to the petitioner at the time of the hearing on the underlying action, or would an injustice be created if the motion for rehearing is denied?

K. Taylor – no
B. Pichette – declined to vote
Z. Tripp – no
L. Horning – no
F. Seagroves – no

Z. Tripp made a motion to deny the motion for rehearing for Case #2013-03. L. Horning seconded the motion

Final Vote:
K. Taylor – yes
B. Pichette – no
Z. Tripp – yes
L. Horning – yes
F. Seagroves – yes
Motion to deny rehearing on Case # 2013-03 passed by 4 to 1 vote.